

11 April 2018

NAT 007/18

FWC Full Bench decisions on unpaid domestic violence leave, family friendly provisions and public holidays

SUMMARY

The Fair Work Commission (FWC) has handed down decisions in three major cases. Ai Group played the leading role in representing employers in each of these cases.

- First, following the decision last year to reject the ACTU's claim for 10 days per year of *paid* domestic violence leave, a Full Bench of the FWC has decided to vary awards to give employees an entitlement to up to five days of *unpaid* domestic violence leave each year. Immediately following the decision, the Federal Government announced its intention to amend the *Fair Work Act* to give all employees an entitlement to five days of *unpaid* domestic violence leave.
- Second, a Full Bench of the FWC has handed down its decision in the *Family Friendly Work Arrangements Case*, rejecting the ACTU's claim in the case but supporting a new standard award clause aimed at facilitating discussions between employers and employees about flexible work arrangements. If the ACTU's claim had been accepted, employees with parenting or other caring responsibilities would have been given the right to dictate to their employer what hours and days they work, with the employer having no right to refuse regardless of the circumstances.
- Third, a Full Bench of the FWC has handed down its decision in the *Public Holidays Case*. The decision protects employers in a number of key industries from big cost increases that would have occurred if the unions' claims had been accepted.

FWC Unpaid Domestic Violence Leave Decision

In Member Advice [Nat 014/17](#), Members were advised of the decision of a Full Bench of the FWC last year to reject the ACTU's claim for 10 days of *paid* domestic violence leave.

On 26 March 2018, a Full Bench of the FWC decided to implement an award entitlement to up to five days of *unpaid* leave per year for those who need to deal with the impact of domestic violence.

An employee will only be able to take the leave if it is necessary for them to do something to deal with the impact of the domestic violence, and it is impractical for them to do this outside of working hours.

Ai Group has played a leading role throughout the FWC's *Domestic Violence Leave Case* in representing the interests of employers.

At this stage no awards have been varied to include the new unpaid domestic violence leave entitlement. The FWC intends to issue a draft award clause for public comment. Ai Group will consider the draft clause and express its views on the clause to the FWC.

The FWC intends to review the operation of the unpaid domestic violence leave entitlements in June 2021 and, at that time, also consider whether any paid domestic leave entitlements should be provided to employees and/or access granted to personal/carer's leave entitlements.

Federal Government announcement regarding unpaid domestic violence leave

Immediately following the FWC's *Unpaid Domestic Violence Leave Decision*, the Minister for Small and Family Business, the Workplace and Deregulation, the Hon Craig Laundy MP, announced that the Federal Government intends to implement an entitlement to five days of unpaid domestic violence leave through amendments to the *Fair Work Act*.

This will have the effect of extending the unpaid leave entitlement determined by the FWC for award-covered employees, to all employees.

The legislation has not yet been drafted.

FWC Family Friendly Work Arrangements Decision

On 26 March 2018, a Full Bench of the FWC handed down its decision in the *Family Friendly Work Arrangements Case*. Ai Group played the leading role in representing employers in the case. If the ACTU's claims had been accepted, all awards would have been varied to give employees with parenting or other caring responsibilities the right to dictate to their employer what hours and days they work, with the employer having no right to refuse regardless of the circumstances.

The FWC has drafted a model clause aimed at facilitating discussion between employers and employees about flexible work arrangements rather than imposing outcomes upon employers. At this stage no awards have been varied to include the new clause. The FWC has indicated that it will receive further submissions before making a final decision on the terms of the clause.

Ai Group is carefully considering the wording of the draft model clause and will express its views to the FWC in due course.

FWC Public Holidays Decision

On 5 March 2018, a Full Bench of the FWC handed down its decision in the *Public Holidays Case*. Ai Group played the leading role in representing employers in the case. The decision protects employers in a number of key industries from big cost increases that would have occurred if the unions' claims had been accepted.

The Shop, Distributive and Allied Employees' Association was seeking an award right for full-time employees and certain part-time employees to have an alternative paid day off or an extra day's pay for each public holiday that falls on a day that they are not ordinarily required to work. This claim, which would have cost the relevant industries many millions of dollars a year, has been rejected by the Full Bench.

The Australian Manufacturing Workers' Union was seeking to create an award entitlement for employees to receive public holiday penalty rates for work on 25 December and on any substituted Christmas Day public holiday where 25 December falls on the weekend. The AMWU's claim has been rejected by the Commission.

A similar Health Services Union claim has not yet been determined and will be the subject of further proceedings.

Do you require further advice?

For information or assistance, please contact the **Ai Group Workplace Advice Line** on 1300 55 66 77.

Should you require any detailed advice on developing employment policies, contracts of employment or other workplace relations arrangements, our team of professional workplace relations advisers and lawyers at [Ai Group](#) and [Ai Group Workplace Lawyers](#) are available to assist you.



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